

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS**

MIDLAND-ODESSA DIVISION

CASE NO.: 7:15-cv-00135-DAE

STACY GRAHAM, on behalf of
himself and all others similarly
situated,

Plaintiff,

vs.

JET SPECIALTY, INC.,

Defendant.

SECOND AMENDED COMPLAINT
{Jury Trial Demanded}

Plaintiff, STACY GRAHAM, on behalf of himself and all others similarly situated, by and through counsel, hereby sets forth this Representative Action Complaint for Violation of the Fair Labor Standards Act as follows:

NATURE OF THE COMPLAINT

1. Plaintiff, STACY GRAHAM, brings this action against Defendant, JET SPECIALTY, INC., (Hereinafter "Defendant") for unpaid overtime wages and related penalties. Plaintiff alleges, on behalf of himself and all other similarly situated hourly employees of Defendant, that Defendant failed and refused to pay Plaintiff, and all others similarly situated, the proper overtime pay for time worked in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, Et. Seq.

2. Plaintiff seeks declaratory relief, unpaid overtime pay, liquidated and/or other damages as permitted by applicable law, and attorney's fees, costs, and expenses incurred in this action.

3. At all times relevant hereto, Defendant had an illegal practice and policy under FLSA of paying Plaintiff, an overtime non-exempt delivery driver as well other similarly situated delivery drivers at a flat salary rate and willfully failing and refusing to pay them the proper overtime premium due and owing.

JURISDICTION AND VENUE

4. This Court has original federal question jurisdiction pursuant to 28 U.S.C. § 1331 because this case is brought under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq.*

5. The Western District of Texas has personal jurisdiction over Defendant because it is doing business in Texas and in this judicial District.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred in this District.

A. Plaintiffs

Named Plaintiff

7. Plaintiff, STACY GRAHAM, is a resident of this judicial district. Defendant employed Plaintiff as a delivery driver from March 1, 2013 to April 30, 2014. Ex. A (Opt-in Notice).

8. At all relevant times, Plaintiff was an employee of Defendant for FLSA purposes.

Representative Action Members

9. The putative members of the representative action are those current and former employees of Defendant who are similarly situated to Plaintiff; i.e., those delivery drivers who were not paid their regular or statutorily required overtime rate of pay for all hours worked.

B. Defendant

10. Defendant is a Corporation organized under the laws of the State of Texas and conducts business in said state.

11. Upon information and belief, Defendant employed or employs the Named Plaintiff and the putative members in the representative action.

REPRESENTATIVE ACTION ALLEGATIONS

12. Plaintiff brings this Complaint as a collective action pursuant to the FLSA, 29 U.S.C. § 216(b), on behalf of all persons who were, are, or will be employed by Defendant as non-exempt salaried employees who have not been compensated at the overtime premium rate for all hours worked in excess of 40 hours per week.

13. This Complaint may be brought and maintained as an "opt-in" collective action, pursuant to 29 U.S.C. § 216(b), for all claims asserted by the Representative Plaintiff because his claims are similar to the claims of the putative plaintiffs of the representative action.

14. The names and addresses of the putative members of this representative action are available from Defendant. To the extent required by law, notice will be provided to said

individuals via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in representative actions.

FACTUAL BACKGROUND

15. Defendant failed or refused to pay Plaintiff and other similarly situated delivery drivers the proper overtime pay for all hours worked in excess of 40 hours per week. Specifically, for the duration of his employment with Defendant, Plaintiff and other similarly situated delivery drivers worked anywhere from 6-7 days per week (i.e. averaging from 65 to 95 or more hours per week), were paid a flat salary and did not receive an overtime premium for all hours worked in excess of 40 hours per week.

16. Management directed and/or was aware of employees not being properly compensated for all hours worked in excess of 40 hours per week and therefore willfully violated the FLSA.

17. Up until the present, Defendant at its various field supply stores routinely employed Plaintiff and other similarly situated delivery drivers to deliver parts and other supplies for the benefit of its customers.

VIOLATION OF THE FAIR LABOR STANDARDS ACT

18. Plaintiff, STACY GRAHAM, on behalf of himself and all other similarly situated employees of Defendant, realleges and incorporates herein the allegations contained in Paragraphs 1 through 17 as if they were set forth fully herein.

19. At all relevant times, Defendant has been and continues to be an "employer" engaged in the interstate "commerce" and/or in the production of "goods" for "commerce" (i.e. the oil well and part sales and distribution business) within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Defendant has employed and/or

continues to employ "employee[s]," including Plaintiff and each of the putative members of the FLSA representative action who themselves handled goods that had travelled in interstate "commerce." At all times, Defendant has had gross operating revenues in excess of \$500,000.00 per annum.

20. The FLSA requires each covered employer, such as Defendant, to compensate Plaintiff, a non-exempt delivery driver for all hours worked in excess of 40 hours per week at time and a half of the employee's regular rate of pay.

21. Plaintiff and the putative members of the FLSA representative action are not exempt from the right to receive the appropriate overtime pay under the FLSA and in fact work overtime hours for which an overtime premium was not paid.

22. As a result of Defendant's failure to compensate its employees, including Plaintiff STACY GRAHAM and all similarly situated employees at the overtime rate of pay for all hours worked in excess of 40 hours per week, Defendant has violated—and continues to violate—the FLSA, 29 U.S.C. § 207(a)(1).

PRAYER FOR RELIEF

23. Designation of this action as a collective action on behalf of the proposed members of the FLSA representative action and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b);

24. Designation of Plaintiff, STACY GRAHAM, as Representative Plaintiff of the putative members of the FLSA representative action;

25. A declaratory judgment that the practices complained of herein are unlawful

under the FLSA;

26. An award of damages, including liquidated damages, to be paid by Defendant;

27. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees; Pre-Judgment and Post-Judgment interest, as provided by law; and

28. Any and all such other and further legal and equitable relief as this Court deems necessary, just, and proper.

DEMAND FOR JURY TRIAL

Plaintiff, STACY GRHAM on behalf of himself and all others similarly situated, hereby demands a jury trial on all causes of action and claims with respect to which they and all members of the proposed representative action have a right to jury trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed on November 30, 2015 with the Clerk of Court using CM/ECF along with having served all counsel of record or pro se parties identified on the service list incorporated herein in the manner specified, either via transmission of Electronic filing generated by CM/ECF or in some other authorized manner for those counsel or parties not authorized to receive electronically Notice of Electronic Filing.

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CONSENT TO JOIN PURSUANT TO 29 U.S.C. §216(b)

Name: Stacy Graham

1. I hereby consent and agree and opt-in to become a plaintiff in the lawsuit brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.*, to recover unpaid overtime and/or minimum wage compensation from my current / ✓ former employer.
2. I hereby agree to be bound by any adjudication of this action by the Court, whether it is favorable or unfavorable. I further agree to be bound by any collective action settlement herein approved by my attorneys and approved by this Court as fair, adequate, and reasonable.
3. I intend to pursue my claim individually, unless and until the Court certifies this case as a collective action. I agree to serve as a class representative if the court approves. If someone else serves as a class representative, then I designate the class representatives as my agents to make decisions on my behalf concerning the litigation, the manner of conducting the litigation, the entering of an agreement with the Plaintiff's counsel concerning attorney's fees and costs, and all other matters pertaining to this lawsuit.
4. In the event the case is certified and then decertified, I authorize Plaintiffs' counsel to use this Consent Form to re-file my claims in a separate or related action against my employer.
5. I hereby designate Loren & Associates, P.A. to represent me in this action.

Date: 8-30-15

Stacy Graham
Signature